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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of:	)	
	)	
Implementation of Section 17 of the Cable Televsion Consumer Protection and Comptetion Act of 1992	)	ET Docket 93-7
	)	
Compatibility Between Cable Systems and Consumer Electronics Equipment	)	

COMMENTS OF THE CABLE TELECOMMUNICATIONS ASSOCIATION, INC.

Cable Telecommunications
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Electronics Equipment	)	

1. The Cable Telecommunications Association, Inc., ("CATA"), hereby files comments in the above-captioned proceeding. CATA is a trade association representing owners and operators of cable television systems serving approximately 80 percent of the nation's more than 60 million cable television subscribers. CATA files these comments on behalf of its members who will be directly affected by the Commission's action.

2. The NCTA/EIA Cable Consumer Compatibility Advisory Group (CAG), of which CATA has been a participant, has worked for more than a year to reach agreements that assure responsible compliance with the compatibility requirements of the Cable Act of 1992. It is, for the most part, gratifying to note that in its Notice, as in the Report to the Congress, the Commission has relied to a significant extent on the efforts of the CAG.

3. With minor exception, CATA fully subscribes to the comments filed by the CAG in this proceeding. There is no need to repeat the CAG's positions here. There are, however, two points that we believe require particular emphasis - the matter of charges for provision of decoder interface devices and the proposal that basic services not be scrambled.

4. Equipment Charges. The Commission's proposal that cable operators not be permitted to charge for the provision of decoder interface devices that would be required to achieve compatibility with new "cable ready" television receivers appears simply punitive. The compatibility problem between cable systems and television receivers has developed as a result of disparate technologies evolving at a different pace, not because the cable industry has engaged in profiteering or has chosen a technology designed to disadvantage owners of some receivers. The record in this proceeding is singularly complete, and it is significant that the two affected industries have not only reached agreement for dealing with present problems, but have started a process to avoid further problems in the future. There is no basis whatsoever in the record of this proceeding for adopting regulations that would penalize one industry for its efforts to achieve compatibility. The manufacturers of television receivers have agreed to build "cable ready" receivers with decoder interface circuitry. Cable operators have agreed to provide decoder interface devices, and, moreover, have offered to install

the first of these devices at no charge. There is no rational foundation for the proposal that cable operators not be able to charge for their use. Such a scheme would be tantamount to a proposal that the television manufacturers not be able to recover the costs they will surely bear in designing and building the receivers that will comply with the proposed regulations. And, it should be noted, that while compliant receivers may cost somewhat more, decoder interface devices to be supplied by cable operators will cost less than present cable converters.

5. As with many of the new regulations adopted to implement the Cable Act of 1992, the burden of complying with any rule that would restrict the ability to recover even costs, let alone some minimal profit, will fall most heavily on those who can least afford it - operators of smaller cable systems. The "small system problem," yet to be addressed by the Commission, has grown particularly acute. For some of these systems it has been more than two years since any rate increase. Many are operating below the Commission's benchmarks already; even when the rate freeze is lifted, their rates will remain capped. Smaller systems may face increasing competition from alternative video delivery systems and their diminishing profits and the uncertainty created by the Commission's processes make it all but impossible to secure financing to re-build their systems to meet the competition. Not being able to recover costs for decoder interface devices would be yet another blow.

6. The Commission has advanced the notion that not permitting cable operators to charge for the use of decoder interface devices, will create an incentive to advance the development of "in the clear" delivery systems. But as the Commission has acknowledged, however reluctantly, "in the clear" technology is simply not suitable for most systems and is very costly. Moreover, it is not at all clear that an "in the clear" delivery mechanism will be at all suited for the inevitable advent of digitally compressed, large capacity cable systems. If the construction of the "information superhighway" is to be encouraged, it is wishful thinking to imagine that waiting for some undeveloped "in the clear" technology is a sensible approach. The superhighway will be characterized by huge capacity computer servers, optical fiber, and terminal devices that will permit the selection and delivery of digitally compressed signals to receiving devices. It is not likely to be compatible with "in the clear" technologies whose purpose is to filter out a relatively small number of standard television channels. It is far more likely that a decoder interface device that will de-compress digital signals and still be compatible with television receivers will prove to be the technology of choice.

7. If the Commission is proposing to permit cost recovery for decoder interface devices only by considering them in some undefined way as part of the cable system's physical plant

(like a trunk line amplifier) in order to encourage "in the clear" technology, it is taking a strange approach to financing the delivery of services. In both cases, all subscribers will have to pay for benefits received only by some. Subscribers who cannot afford cable ready receivers and subscribers who cannot afford services that are traditionally scrambled will have to pay extra for the benefit of others. This is clearly the opposite of the approach Congress intended. Moreover, if the Commission persists in defining some terminal devices as part of a system's physical plant it will be creating the peculiar situation where some subscribers with "cable ready" receivers pay nothing for the use of their terminal devices, while their neighbors, without "cable ready" receivers pay monthly charges for theirs. Surely, such a result was not contemplated by the Congress.

8. Congress has spoken to the issue of what and how cable operators can charge for terminal devices - cost, plus a reasonable profit, unbundled from channel charges. Perversely, the Commission now proposes to bundle the costs of some terminal devices. In the face of clear Congressional intent (to which the Commission, in carrying out the rest of the Cable Act, has been more than scrupulously faithful) the Commission is ignoring the regulatory scheme that Congress prescribed. There is no indication whatsoever in the Cable Act that the Commission's responsibilities under the compatibility section permits it to adopt a different rate regulation scheme.

The Commission cannot, simply out of some visceral antipathy to terminal devices, ignore the rate regulation process contemplated by the Act. The Commission's charge from the Congress was simply to insure compatibility between cable systems and television receivers. This it is proposing to do, on the whole, in a pragmatic and reasonable way. Not permitting a charge for the use of decoder interface devices, however, would not only be unfair to both cable operators and subscribers, but it would also be unlawful.

9. In its Notice, noting that its proposal "departs" from the rate regulations which require unbundling of equipment charges for terminal devices, the Commission, rather than addressing the legality of the departure, states:

> Parties who believe that permitting a separate charge for this new equipment [decoder interface devices], as with our rate regulation of current equipment, would better achieve these goals should provide clear evidence to support that belief.

This singularly cynical challenge ignores the fact that the Commission itself has not offered any "clear evidence" to support its view that by not permitting cost recovery, it will be stimulating "in the clear" technology or even that it will be furthering the goals of Section 17 of the Act. The Cable Act is replete with goals. One is to unbundle equipment charges. Obviously, the Commission's proposal does not further this goal. Another goal of the Act is to assure cable operators a reasonable profit. Not permitting recovery even of costs hardly seems to

further this goal. Another is to avoid regulations that would impose an "undue economic burden" on cable systems. Who has the burden of providing "clear evidence" that this goal will be furthered by denying cable systems the right to recover costs for decoder interface devices? As the Commission is very will aware, merely to ask whether some action, no matter how draconian, furthers some goal is not sufficient basis for making sound policy. The regulatory process requires a balancing of considerations. CATA believes that the Cable Act, if it is ever to be manageable, must be viewed as a whole. The Commission would be ill-advised to regulate based on the goals of only one section of the Act while ignoring the others.

10. Scrambling of basic service. Faced with no record evidence that any cable system has ever scrambled basic service, the Commission has now proposed to ban the practice. This is puzzling. CATA knows of no system that has ever scrambled basic service. Indeed, we know of no system that is contemplating such a practice. But to place administrative barriers on technology strikes a discordant note. As a matter of philosophy, we question the wisdom of banning a practice that may serve the public interest in the future. One such scenario might involve the need of small cable systems with limited channel capacities to expand their capacity in order to compete with multi-channeled video services that have no obligation at all to provide what is defined as basic service. Very small systems might not (and in

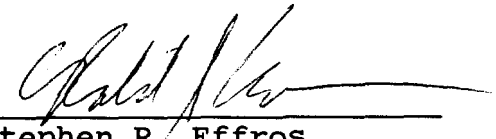
the present regulatory environment, cannot) afford re-build costs which, in any event, might only increase their channel capacity by a modest amount. But were these systems permitted to compress their channels (and we presume the Commission's proposal to ban scrambling on basic channels extends to compression as well), new opportunities to provide the public with additional service would be created. It may well be that systems will not choose compression of all channels. In fact, CATA believes that any plans now being considered do not include the compression of channels delivering basic service. But should such a scheme prove necessary for a system with limited channel capacity, why create an artificial roadblock? CATA agrees with the CAG view that, should the Commission follow through with its proposal, it should, at least, contemplate a waiver policy that would give both the industry and the Commission the flexibility to deal with individual circumstances. A wiser course, however, would be to adopt no restriction at all.

11. Conclusion. With the exception of the issues discussed above, CATA believes that the Commission has taken a responsible and pragmatic approach to the compatibility problem. It has successfully encouraged the affected industries to develop both short-term and long-term approaches to achieve the best solutions possible, particularly given the large embedded base of television receivers that can tune some number of cable channels, and the practical limitations of present and foreseeable

technology. CATA supports the approach taken by the CAG, and to a large extent the similar approach proposed by the Commission. We urge the Commission, however, to adopt regulations with an understanding of the severe potential impact that might be visited upon cable operators, particularly operators of smaller systems. CATA and its members will continue to provide the Commission with whatever information we can.

Respectfully submitted,

THE CABLE TELECOMMUNICATIONS
ASSOCIATION, INC.

by: 

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